

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EDITH KOHN

Claim No. CU - 0652

Decision No. CU - 4409

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on January 13, 1970.

Oral hearing held on March 26, 1970.

FINAL DECISION

Under date of January 13, 1970, the Commission issued its Proposed Decision denying this claim on the ground that claimant had failed to sustain the burden of proof.

At an oral hearing held on March 26, 1970, claimant appeared and testified on her own behalf, and submitted extracts from records maintained by her and her late husband. The testimony and the extracts related to her late husband's stock interest in Cia. de Europea de Motores, a Cuban corporation, and to loans he had made to that corporation.

Upon consideration of the oral testimony and the evidence presented at the hearing in the light of the entire record, it is

ORDERED that the Final Decision be entered as follows:

The Commission now finds that claimant's late husband owned a stock interest in Cia. de Europea de Motores. In an affidavit, dated January 14, 1966, from the former president of this corporation, it was stated that the corporation was taken by the Cuban Government in 1961. In the absence of evidence to the contrary, the Commission finds that the taking occurred on July 1, 1961.

Since Cia. de Europea de Motores was organized under the laws of Cuba

it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

On the basis of the entire record, the Commission finds that the value of the stock interest on July 1, 1961 was \$20,000.00.

The Commission further finds that claimant's late husband had loaned the Cuban Corporation the sum of \$27,000.00, which remained outstanding on July 1, 1961.

The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore finds that claimant's late husband sustained a loss in the amount of \$27,000.00.

Upon the death of claimant's late husband on May 6, 1966, she succeeded to his claim against the Government of Cuba.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest shall be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim, it is so ordered.

No evidence in support of any other portion of the claim having been submitted, it is further

ORDERED that the Proposed Decision be affirmed in all other respects, and that a certification of loss be entered as follows:


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CERTIFICATION OF LOSS

The Commission certifies that EDITH KOHN succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Seven Thousand Dollars (\$47,000.00) with interest at 6% per annum from July 1, 1961 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

15 APR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EDITH KOHN

Claim No. CU -0652

Decision No. CU 4409

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,997,000.00, was presented by EDITH KOHN based upon the asserted loss of stock interests in Cuban corporations. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant originally asserted the following losses of stock interests in Cuban corporations:

1. 3,100 shares of Latin American Exploration Company. Claimant stated that the stock cost \$10.00 per share; that the corporation owned oil rights; and claimed \$31,000.00.
2. 10,000 shares of Fish By-Products Corporation. Claimant stated that the stock cost \$10,000.00, representing a 20% interest therein; that the corporation owned a plant where it manufactured fish meal; and claimed \$40,000.00, asserted to be 20% of \$200,000.00, the value of the corporation.
3. A one-third interest in Cia. Europea de Motores, and a further interest represented by an advance of \$27,000.00 to the corporation. Claimant stated that her investment was \$52,000.00, including the advance and the stock interest in the amount of \$25,000.00; that the corporation imported C-Z motorcycles and Skoda cars; and claimed \$500,000.00 as the value of the one-third interest.
4. 20 shares of Cia. Publicitaria Angloamericana, S.A. Claimant stated that the stock cost \$50.00 per share; that it represented a 20% interest in the corporation; and claimed \$6,000.00 as the value of the 20% interest.
5. A one-third interest in Rancho Luna. Claimant stated that the stock cost \$100,000.00; that the corporation owned 950 acres of land in Pinar del Rio Province, Cuba, which was worth about \$3,500,000.00; and claimed \$1,160,000.00 as the value of the one-third interest.
6. A one-third interest in Blanca Arena Land Company. Claimant stated that the stock cost \$100,000.00; that the corporation owned 7-1/2 miles of waterfront property in Matanzas Province, Cuba, which was worth about \$3,500,000.00; and claimed \$1,160,000.00 for the value of the one-third interest.

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During the course of processing this claim, it appeared that claimant's late husband, a native-born American who died on May 6, 1966, owned 10,000 shares of Fish By-Products Corporation and may have owned interests in the other stock claimed herein. This matter was brought to claimant's attention to ascertain the extent of claimant's interests since her late husband died intestate. Claimant's response was that she was the sole owner of all the property claimed, including the additional 10,000 shares of stock of her late husband, and submitted assignments executed by her two children, also native-born Americans. However, claimant did not increase the amount of her claim although this too was brought to her attention.

Originally, claimant submitted copies of stock certificates evidencing ownership of: 3,100 shares of stock in item (1) above, and 20 shares of stock in item (4) above; an affidavit, dated January 26, 1966, from the former Secretary of item (2) above; and an affidavit, dated January 14, 1966, from the former President of item (3) above. The affidavit of January 26, 1966 indicated that claimant and her late husband each owned stock in item (2) above, with a value of \$10,000.00 each; and that the corporation was taken by Cuba in 1961. The other affidavit indicated that claimant's late husband owned a stock interest in item (3) above, with a value of \$25,000.00; that the late Mr. Kohn had paid certain obligations of the corporation in the amount of \$12,000.00 which was never repaid to him; and that the late Mr. Kohn had informed the affiant that he had paid another debt of the corporation in the amount of \$15,000.00. No evidence whatsoever was submitted in support of items (5) and (6) above; nor were any financial statements or similar evidence submitted concerning any of the six corporations to establish the values of stock interests therein.

Accordingly, the Commission suggested as far back as October 27, 1967 that appropriate supporting evidence be submitted. Claimant filed another

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affidavit, dated April 25, 1969, from the former President of item (3) above, indicating that the late Mr. Kohn had invested \$20,000.00 in that corporation, as opposed to the earlier affidavit setting forth a different amount.

The Commission advised claimant of this discrepancy in a letter of May 2, 1969 and again requested evidence with respect to all of the property claimed. Similar letters were directed to claimant under dates of May 22, 1969, June 3, 1969, June 25, 1969 and September 30, 1969. In the last letter, the Commission pointed out that its records disclosed that other claimants had presented claims for stock interests in item (1) above; and that in one case the evidence established that the claimant therein had acquired his stock in November 1957 at a cost of \$2.00 per share, whereas claimant herein had stated the stock cost \$10.00 per share, apparently in October 1957, the date of issuance appearing in the stock certificates. That claim (Claim No. CU-0341) has not yet been determined.

It is noted that in the Claim of George Krupiak, Claim No. CU-0648, claim was made for \$500.00, based upon 100 shares of item (1) above acquired in November 1957 for \$200.00 and upon 100 shares of said stock acquired in January 1958 for \$300.00. That claim was denied for lack of proof. (Final Decision entered May 21, 1968.) In the Claim of Monroe G. Koggan, Claim No. CU-0504, claim was made for \$10,000.00, based upon 100 shares of item (1) above which that claimant was holding as collateral for a loan he made in the amount of \$10,000.00 to Edko Associates. The record herein indicates that claimant's stock interests in item (1) above were acquired by assignment from Edko Associates. Claim No. CU-0504 was also denied for lack of proof. (Final Decision entered May 21, 1968.)

To date, no further evidence has been filed.

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The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim under Title V of the Act. Accordingly, this claim is denied in its entirety.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

13 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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